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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TESSIE CLEVELAND
COMMUNITY SERVICES
CORPORATION,

Plaintiff and Respondent,

v.

MOHSEN LOGHMANI,

Defendant and Appellant.

B263845

(Los Angeles County
Super. Ct. No. EC057134)

TESSIE CLEVELAND
COMMUNITY SERVICES
CORPORATION,

Plaintiff and Respondent,

v.

MOHSEN LOGHMANI et al.,

Defendants and
Appellants.

B266052

(Los Angeles County
Super. Ct. No. EC057134)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Elizabeth A. Lippitt, Judge. Affirmed.

Mohsen Loghmani, in pro. per., and Mahshid Loghmani, in pro. per., for Defendants and Appellants.

J.J. Little & Associates, James J. Little, and Michael Thompson for Plaintiff and Respondent.

* * * * *

Defendant Mohsen Loghmani appeals the judgment against him and his wife, Mahshid,¹ in favor of plaintiff Tessie Cleveland Community Services Corporation (Tessie) in an action under the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq.)² to set aside an allegedly fraudulent transfer of his interest in his residence to his wife. He and Mahshid together appeal the court's postjudgment award of attorney fees and costs to Tessie. We affirm both the judgment and the fee award.

¹ We will refer to Mohsen and Mahshid collectively as "defendants" or individually by their first names for convenience.

² In 2015, the Uniform Fraudulent Transfer Act was renamed the Uniform Voidable Transactions Act (UVTA), and its provisions apply to transactions that occur after January 2016. (Civ. Code, § 3439.14, subd. (a).) Although the transfer at issue here took place in 2008, the UVTA did not change the substance of any similar prior provisions, and the parties do not point to any substantive differences between the prior and current acts. (Civ. Code, § 3439.14, subd. (d).) Thus, all undesignated statutory references are to the current version of the UVTA, unless otherwise noted.

BACKGROUND

The trial court entered judgment in Tessie's favor following a bench trial, so we summarize the evidence in the light most favorable to Tessie, giving it the benefit of every reasonable inference and resolving conflicts to support the judgment. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 481, fn. 1 (*Ermoian*)). Further, defendants did not request a statement of decision, so we imply all factual findings necessary to support the judgment. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 59-61.)

Tessie is a nonprofit, community-based mental health services center serving children and families in Los Angeles County. In 2007, Tessie hired Mohsen, a licensed general contractor and engineer doing business as L.A. Design Group, to extensively remodel two of Tessie's facilities. As relevant here, the parties signed a contract on August 2, 2008, covering Mohsen's services for one of those facilities (the Broadway facility).

On August 1, 2008, one day before Mohsen signed that agreement, Mahshid purchased the property at issue in this case, located on Laurel Canyon Boulevard in North Hollywood (the Laurel Canyon property), in a conservatorship proceeding. A conservator's deed was executed in her favor shortly thereafter. On September 17, 2008, Mohsen executed a quitclaim deed of his interest in the property to Mahshid.

Believing Mohsen's work was defective and that he had received payment for work he had never performed, Tessie filed a civil case against him on October 26, 2009 (the underlying case). After a trial, a jury rendered a verdict on December 28, 2011, in Tessie's favor for \$388,325.47. The court entered judgment for

Tessie in that amount on March 7, 2013. A year later on March 18, 2014, it awarded Tessie \$1,458,101.25 in attorney fees and \$22,963.15 in costs, for a total judgment of \$1,869,389.87.

After the verdict but before judgment, Mohsen filed for bankruptcy in 2012. He listed the Laurel Canyon property as Mahshid's separate property and did not list her as a creditor, although he listed his brother and son as unsecured creditors. He also listed liabilities that exceeded his assets by \$1 million. The bankruptcy court ultimately denied discharge because Mohsen concealed property within one year of filing bankruptcy with the intent to hinder, delay, or defraud creditors and because he knowingly and fraudulently made a false oath or account.

Anticipating the judgment in the underlying case, Tessie filed the instant case against Mohsen and Mahshid on October 28, 2011, seeking to set aside Mohsen's transfer of his interest in the Laurel Canyon property under the UVTA. Tessie alleged defendants used Mohsen's assets to purchase the property and pay the mortgage, operating expenses, and taxes, but held the property in Mahshid's name in order to shield Mohsen's assets from his creditors.

At a bench trial, Tessie introduced evidence to show the following: (1) Mohsen directly paid part of the down payment on the Laurel Canyon property via a check he personally signed on August 1, 2008. (2) Nearly two years of mortgage payments between September 2012 and July 2014 were paid directly from defendants' joint account. (3) At other times, defendants would transfer money from joint accounts to Mahshid's separate account to fund mortgage payments. (4) In Mohsen's bankruptcy schedules, he claimed the Laurel Canyon property was his wife's separate property, but also listed a "fee simple" interest in the

property, listed the mortgage as a debt, and claimed a homestead exemption for the property.

The court issued a special verdict³ and judgment in Tessie's favor, finding it proved its intentional and constructive fraudulent transfer claims under the UVTA. (§ 3439.04, subd. (a).) It specifically found Mahshid and Mohsen had conspired to use Mohsen's assets to purchase the Laurel Canyon property and conceal that fact from creditors. It set aside Mohsen's transfer of his interest to Mahshid, ordered the clerk to issue a writ of attachment for the property in accordance with the judgment in the underlying case, and declared the judgment a lien on the property. Defendants filed motions for a new trial and to enter a different judgment, which the court denied. Defendants timely appealed from those postjudgment motions.

The court later awarded Tessie \$315,891.75 in attorney fees. Defendants separately timely appealed that order.⁴

DISCUSSION

Tessie points out several deficiencies in defendants' appellate briefs and appendices, including inadequate statements of facts, the absence of record citations for many factual assertions, the inclusion of matter beyond the trial court record, and notations made directly on the documents the appendices. (See Cal. Rules of Court, rules 8.124(g) [appendix must contain accurate copies from superior court file], 8.204(a)(1)(C) [briefs

³ Although the court conducted a nonjury trial, it entered its findings in a proposed "special verdict" form. For consistency, we will refer to this document as it was presented to the trial court.

⁴ We granted defendants' unopposed request to consolidate the appeals.

must contain record citations], 8.204(a)(2)(C) [opening brief must contain summary of significant facts limited to record]; see *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [noting similar deficiencies in the appellant's briefs].) Defendants are proceeding without an attorney, but they are still subject to the procedural rules governing appeals. (*Nwosu*, at pp. 1246-1247.)

Nonetheless, the record and briefing on appeal are not so inadequate that we are unable to review defendants' claims, so we will do so unless noted otherwise.⁵

1. New Trial Motion

Defendants assert the following grounds to argue the trial court should have granted a new trial: (1) the court erroneously granted Tessie's motion to quash trial subpoenas to Tessie CEO Moses Chadwick and Tessie employees Carolyn Chadwick and Evelina Monzon; (2) the court improperly refused to grant a trial continuance so defendants could review Tessie's trial exhibits; (3) Tessie improperly withdrew expert witness Richard McGuire; and (4) the court should have excluded Tessie's expert witness Jan Tucker. We reject each of these contentions.

⁵ Mahshid did not join Mohsen's appeal from the judgment, although she did join the appeal from the attorney fees order. Tessie claims Mohsen lacks standing to appeal the judgment in her absence because he is not "aggrieved" as the transferor of his interest in the Laurel Canyon property. (Code Civ. Proc., § 902 [an "aggrieved" party may appeal]; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737 [an "aggrieved" party is one "whose rights or interests are injuriously affected by the judgment"].) We disagree. He is "aggrieved" by the judgment because it set aside the conveyance of his interest in the property and imposed a lien on that interest, subjecting it to Tessie's collection efforts.

A. The Court Properly Quashed the Subpoenas to Tessie Employees.

Before trial, a different judge than the trial judge denied defendants' ex parte motion to take the deposition of Tessie CEO Moses Chadwick and for production of documents, finding it was untimely. Later, the trial judge addressed Tessie's motion to quash subpoenas for Moses Chadwick and employees Carolyn Chadwick and Evelina Monzon to testify at trial. Mohsen gave an offer of proof that Moses Chadwick would testify to the "dates of the projects" and verify "the amount of [the] checks on such-and-such date into my wife's account or L.A. Design Group accounts," which would show the "monies which are being used basically for my wife's property is [sic] independent of the monies that basically coming from Tessie, and she is not the party to that lawsuit, and there is no connection between her and Tessie's judgment." He further explained Carolyn Chadwick was "basically handling all the financials" and Evelina Monzon was someone Moses Chadwick identified at his depositions who could provide "verification of some payments and some checks." The court quashed the subpoenas for all three witnesses, finding they were procedurally defective, overbroad, burdensome, oppressive, and sought irrelevant testimony.

On appeal, defendants argue the trial judge's decision to quash the subpoenas was erroneous. In support of this argument, they have expanded their offer of proof to claim Moses Chadwick would have testified to a host of issues: Tessie sued defendants after the purchase of the Laurel Canyon property; Mohsen had a good reputation with Tessie between 2005 and the filing of the underlying lawsuit in 2009; Mohsen filed mechanics liens and won a partial verdict against Tessie in the underlying

lawsuit; Mohsen won a verdict against the Chadwicks in a different case; and the circumstances surrounding the hiring of expert witness Jan Tucker. For Carolyn Chadwick and Evelina Monzon, defendants claim they would have testified regarding “the financial aspect of Tessie’s projects during the relevant times” and lack of complaints over Mohsen’s work.

We review the trial court’s exclusion of evidence for abuse of discretion and find none. (*Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 885.) First, defendants have not addressed the court’s finding that the subpoenas were procedurally defective, which was an independent ground for quashing the trial subpoenas. Second, to the extent defendants’ offer of proof in the trial court did not include the matters they assert on appeal, those issues are forfeited. (See *id.* at p. 886 [“The failure to make a specific offer of proof constitutes waiver of a contention that the court erroneously excluded evidence.”].) And third, even absent forfeiture, many of the issues defendants raise now were irrelevant to defending against Tessie’s fraudulent transfer claims. At best, these issues would have had some bearing in the underlying case between the parties. For those issues that were arguably relevant to the fraudulent transfer claims, defendants have not shown these witnesses would have actually given favorable testimony.

B. The Court Properly Denied a Trial Continuance.

On the Friday before testimony began, the parties exchanged trial exhibits. On the following Monday, defendants requested a 72-hour continuance so they could further review Tessie’s five binders of trial exhibits, which they claim contained documents they had not received previously. Tessie explained many of the documents were defendants’ bank records produced

in response to subpoenas to the banks, which Tessie served on defendants. Yet, defendants never requested copies of the documents Tessie received. The court denied the continuance.

We review the denial of a continuance for abuse of discretion. (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126.) Trial continuances are disfavored, and the requesting party is required to affirmatively show good cause to obtain one. (*Id.* at p. 1127; Cal. Rules of Court, rule 3.1332(c).) Defendants have not shown good cause here. They have not explained why they could not have obtained *their own* bank records before trial, even if Tessie had not produced them. (Cf. Cal. Rules of Court, rule 3.1332(c)(6) [good cause may include “[a] party’s *excused* inability to obtain essential testimony, documents, or other material evidence *despite diligent efforts*” (italics added)].) Further, they had the weekend to review Tessie’s trial exhibits, which the court could have reasonably concluded was enough time to prepare for trial. Although defendants claim they started trial “without a single page of requested document production,” they have provided no support for that assertion, nor have they identified any prejudice from the denial of three extra days to review the documents. Again, these were defendants’ own records, and we find no abuse of discretion in the court refusing to continue the trial for defendants to conduct further review.

C. Tessie Properly Withdrew Expert Witness Richard McGuire.

Before trial, Tessie designated three expert witnesses: Richard McGuire (forensic accountant), Ben Tunnell (appraiser), and Jan Tucker (private investigator). McGuire had testified as an expert for Tessie in the underlying case. Defendants apparently issued a subpoena for McGuire to appear at the trial

in this case.⁶ Tessie’s counsel explained that when he saw defendants had designated McGuire as a witness in this case, he opted not to retain him as an expert for trial or call him as a witness. He explained McGuire had not done any work for Tessie with regard to this case and he did not believe McGuire had any relevant information. Defendants objected. The court granted an oral motion to quash defendants’ subpoena to McGuire because he was neither an expert nor a percipient witness in the case. At trial, only Tunnell and Tucker testified.

Defendants argue the court should have granted them a new trial because Tessie withdrew McGuire. We disagree. “[T]here simply is no requirement that a party call a particular witness.” (*County of Los Angeles v. Superior Court* (1990) 222 Cal.App.3d 647, 656.) Absent circumstances not present here, Tessie was permitted to tactically withdraw McGuire and thereby preclude defendants from calling him at trial. (*Id.* at pp. 657-658.) The court also properly quashed defendants’ subpoena (presuming it was validly served) because there appeared to be no reason to permit McGuire to testify—he had done no work related to this case and was not a percipient witness to any of the relevant events.

D. Tessie Properly Called Expert Witness Jan Tucker.

Tessie called private investigator Jan Tucker as an expert witness in the area of specialized debt collection. He had an extensive background in financial fraud, money laundering, and embezzlement, as well as a thorough understanding of how to read and interpret financial documents. He gave detailed

⁶ The copies of the subpoena and proof of service in the record on appeal are unsigned.

testimony on defendants' bank records and opined defendants had engaged in an "unsophisticated attempt to launder assets . . . in order to avoid debt." He also opined the evidence supported the statutory factors indicating "actual intent" to defraud a creditor set forth in section 3439.04, subdivision (b). Specifically, of the 11 statutory factors (which we discuss in more detail below), Tucker testified that "virtually all" of them were met other than the debtor absconding, and he specifically discussed six of them. Defendants extensively cross-examined him, including eliciting testimony that he was not a forensic accountant or a certified public accountant (CPA).

Defendants contend on appeal that Tucker was not qualified to testify to defendants' financial transactions.⁷ They never objected on this basis in the trial court, so their contention is forfeited. (Evid. Code, § 353; *SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 563-564.) Even absent forfeiture, we find no error. We review the court's admission of expert testimony for abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) Defendants attack Tucker's qualifications by pointing out that he was not a forensic accountant or CPA, but that goes to the weight of his testimony,

⁷ Defendants also suggest Tessie did not comply with disclosure requirements for Tucker as an expert witness, and they would have deposed him if he had been properly designated. (See Code Civ. Proc., §§ 2034.260 [exchange of expert witness information], 2034.270 [production of expert witness reports and writings], 2034.410 [expert witness depositions].) They have provided no support for this argument, so we decline to address it. We do note Tessie disclosed Tucker's qualifications and the subject matter of his testimony before trial.

not its admissibility. His extensive background in financial fraud, money laundering, and embezzlement qualified him to render his opinions on defendants’ “unsophisticated” efforts to conceal the nature of Mohsen’s interest in the Laurel Canyon property. This is especially true given most of the documents he interpreted appeared to be straightforward bank account and mortgage documents. The court acted within its discretion in finding him qualified and admitting his testimony.⁸

2. Tessie’s “Standing” Under the UVTA

Defendants assert two contentions they label as “standing” arguments, neither of which is meritorious. First, they argue Tessie had no “standing” under the UVTA because Mohsen never owned or paid money for the Laurel Canyon property. This is simply a restated argument that insufficient evidence supported the judgment, and as we explain below, we reject that contention. Second, they claim Tessie had no “standing” because defendants had a \$175,000 homestead exemption in the Laurel Canyon property that eliminated any equity in the property. (See *Mehrtash v. Mehrdash* (2001) 93 Cal.App.4th 75, 77 [declining to set aside fraudulent conveyance because plaintiff failed to prove value of property exceeded encumbrances and senior liens].) Defendants forfeited this argument because they never raised it in the trial court. Nor have they demonstrated they would be entitled to a \$175,000 homestead exemption. (See Code Civ. Proc., § 704.730, subd. (a)(3) [\$175,000 homestead exemption

⁸ In a separate portion of their opening brief, defendants argue Tucker’s opinions were unreliable because they were not supported by the evidence. This is simply an attack on the sufficiency of the evidence, which we discuss *post*.

applies if judgment debtor or spouse is 65 years old or older, is disabled, or is 55 years old with a specified income].)

3. Sufficiency of the Evidence

Throughout their briefs, defendants argue insufficient evidence supported the trial court's conclusion that Mohsen's transfer of his interest in the Laurel Canyon property to Mahshid was fraudulent. In contravention of the proper standard of review, they rely on their own evidence while ignoring evidence supporting the judgment. When reviewing for substantial evidence, "our review begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the trial court's factual determinations. [Citations.] Substantial evidence is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value." (*Ermoian, supra*, 152 Cal.App.4th at p. 501.) "[W]e may not confine our consideration to isolated bits of evidence, but must view the whole record in a light most favorable to the judgment, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the decision of the trial court.'" (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 833 (*Filip*).)

Under the UVTA, a transfer may be set aside, "whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [¶] . . . With actual intent to hinder, delay, or defraud any creditor of the debtor." (§ 3439.04, subd. (a)(1).) The intent to defraud may be shown by the following 11 nonexclusive statutory factors: (1) whether the transfer was to an insider; (2) whether the debtor retained possession or control of the property transferred after the transfer; (3) whether the

transfer was disclosed or concealed; (4) whether the debtor had been sued or threatened with suit before the transfer; (5) whether the transfer was for substantially all of the debtor's assets; (6) whether the debtor absconded; (7) whether the debtor removed or concealed assets; (8) whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred; (9) whether the debtor was insolvent or became insolvent shortly after the transfer; (10) whether the transfer occurred shortly before or after a substantial debt was incurred; and (11) whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor. (§ 3439.04, subd. (b).)

“[T]hese factors do not create a mathematical formula to establish actual intent. There is no minimum number of factors that must be present before the scales tip in favor of finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other.” (*Filip, supra*, 129 Cal.App.4th at p. 834.) The standard to prove a transfer was fraudulent is a preponderance of the evidence. (§ 3439.04, subd. (c).)

Tessie introduced sufficient evidence to show a fraudulent transfer under the UVTA. First, the evidence showed Mohsen used his assets to pay for the property. He directly paid part of the down payment on the Laurel Canyon property via a check he personally signed, only to quitclaim his interest in the property to Mahshid a month later. Then, between 2012 and 2014—while this litigation was pending—mortgage payments were paid directly from defendants' joint account. As explained by Tucker, at other times, defendants would transfer money from joint accounts to Mahshid's separate account to fund mortgage

payments, which Tucker considered to be an “unsophisticated attempt to launder assets . . . in order to avoid debt.” Further, while Mohsen claimed the Laurel Canyon property was his wife’s separate property in his bankruptcy filing, he also listed a “fee simple” interest in the property, listed the mortgage as a debt, and claimed a homestead exemption for the property.

To rebut this evidence, defendants point to bank records purporting to show Mahshid had amassed separate property totaling \$518,623.79 and she loaned Mohsen and L.A. Design Group \$371,310, suggesting the transfers from Mohsen or L.A. Design Group to Mahshid were partial repayments for those loans, not laundered mortgage payments as Tucker testified. The court was free to reject their characterization of their records, and it had good reason to do so. According to Mahshid’s discovery responses and trial testimony, she had a total income from 2006 to 2012 of approximately \$75,000, not over \$500,000. Further, the bank records themselves say nothing about any loan arrangement between Mahshid and Mohsen, and, for reasons we explain shortly, the court could have found defendants’ characterization incredible.

There also was evidence of several statutory factors relating to defendants’ fraudulent intent:

According to Tucker, the transaction was to the “quintessential insider”—Mohsen’s wife, Mahshid.

Mohsen retained possession and control of the property. Mahshid testified she and Mohsen did not move into the Laurel Canyon property until 2011, although she represented on her loan application she would occupy the property as her primary residence within 60 days. A tenant lived in the property for about a month after the purchase, and then Mohsen stored

construction equipment there, paying Mahshid \$1,200 a month for six or seven months. Then Mohsen performed construction on the property. Mahshid paid him \$18,000 for materials, but paid nothing for his labor because that was “part of his contribution to the house” by “living there. And as husband and wife.” Tucker testified he served papers at the Laurel Canyon property on numerous occasions and only Mohsen had ever answered the door, suggesting he lived there and retained some control over the property. Mohsen also listed the Laurel Canyon property on his 2012 bankruptcy filing as his address and his “primary residence,” and claimed a homestead exemption.

The nature of transaction was concealed in light of defendants’ “unsophisticated” movement of funds from joint accounts to Mahshid’s separate accounts, as Tucker testified.

Although there was no evidence Mohsen had been sued or threatened with suit when he transferred his interest in 2008, there was evidence Tessie had a claim against him around that time even though it did not file the complaint in the underlying case until October 2009. The UVTA defines a “claim” as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” (§ 3439.01, subd. (b).) For torts, a claim arises under the UVTA when it accrues. (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1057-1058 [“‘It is well settled in this state that the relationship of debtor and creditor arises in tort cases the moment the cause of action accrues.’ [Citation.] ‘[O]ne having a claim for a tort is a creditor before the commencement of an action thereon, as well as after, and, as such creditor, is, upon recovering judgment, entitled to avoid a fraudulent transfer antedating the

commencement of his action.” ’ ”].) Tessie and Mohsen signed the Broadway contract in August 2008, and Tucker’s investigation uncovered issues surrounding whether Mohsen “was operating under the proper permits and securing proper inspections of the work” on the Broadway facility. Further, the judgment in the underlying case included a finding that Mohsen intentionally misrepresented facts to Tessie related to the Broadway facility. Tessie and Mohsen entered the Broadway facility contract, at the same time defendants purchased the Laurel Canyon property, and Mohsen quitclaimed his interest to Mahshid shortly thereafter in September 2008. From this evidence the trial court could have inferred that Mohsen sought to shield his interest in the Laurel Canyon property from Tessie’s claim even prior to Tessie filing suit.

There was also evidence to support an inference that Mohsen was insolvent shortly after the transfer. At the time of the purchase of the Laurel Canyon property until 2011, defendants lived in their son’s apartment rent-free because L.A. Design Group “didn’t make any money.” According to Mahshid’s testimony, Mohsen had been borrowing money from her since the 1980’s and owed her \$246,950 since March 2009. Tucker testified this was an indicator that Mohsen was insolvent. By the time of Mohsen’s 2012 bankruptcy filing, he claimed liabilities exceeding assets by more than \$1 million, including a \$340,000 loan from his brother beginning in 2009. Notably, Mohsen admits he became insolvent in September 2009 when Tessie stopped paying his invoices, suggesting he was working on a deficit prior to that. To rebut this evidence, defendants point to evidence that Mohsen had around \$305,000 in net assets at the time of the transfer in 2008. Even so, the evidence shows Mohsen became insolvent

shortly thereafter, supporting an inference he wanted to protect his interest in the Laurel Canyon property from creditors he would not have been able to pay otherwise. The trial court could have considered this evidence among all the other evidence in reaching its conclusion.

We also note defendants were beset with credibility problems that could have prompted the court to reject their testimony entirely. For example, Mahshid claimed the source of the down payment on the Laurel Canyon property was a separate \$59,000 inheritance. But Tessie effectively cross-examined her with bank statements showing she still had that inheritance in her bank account *months after* purchasing the Laurel Canyon property. She also testified at trial and represented on her loan application for the Laurel Canyon property that she and Mohsen paid rent to her son while living at his property, whereas at her deposition and in her bankruptcy testimony she testified they lived there rent free. And Mohsen had been subject to two fraud findings—in the underlying case, the jury found he had made intentional misrepresentations to Tessie; and in the bankruptcy proceeding, the court denied discharge because he had concealed property with the intent to defraud creditors and fraudulently made a false oath.

On this record, sufficient evidence supported the court's judgment finding Mohsen's transfer of his interest in the Laurel Canyon property was fraudulent.

4. Verdict Form on Constructive Fraudulent Transfer Claim

The trial court ruled in Tessie's favor on claims for both an intentional fraudulent transfer under subdivision (a)(1) of section 3439.04 and a constructive fraudulent transfer under subdivision

(a)(2). A “constructive” fraudulent transfer is one in which the debtor did not receive reasonably equivalent value for the property and either the debtor “[w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction” or the debtor “[i]ntended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due.” (§ 3439.04, subd. (a)(2).) The trial court did not make findings in the verdict form or judgment on either of these alternatives. Defendants claim this was error, but we need not address their contention. The court made the proper intentional fraud findings under section 3439.04, subdivision (a)(1), which was supported by substantial evidence, so any error in the findings for the constructive fraudulent transfer claim was harmless.

5. Attorney Fees Award

The contract for the Broadway facility contained a clause entitling Tessie to attorney fees in the underlying case, which the court awarded as part of the judgment in that case. Tessie sought and was awarded attorney fees in the instant case pursuant to Code of Civil Procedure section 685.040. That section provides: “The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney’s fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. Attorney’s fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney’s fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of

subdivision (a) of Section 1033.5.” (Code Civ. Proc., § 685.040.) Under Code of Civil Procedure section 1033.5, subdivision (a)(10)(A), attorney fees are considered costs when authorized by contract. Thus, there are two requirements to entitlement to fees under these provisions: “(1) the fees must have been incurred to ‘enforce’ a judgment; and (2) the underlying judgment had to include an award for attorney fees pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(10)(A)” (*Jaffe v. Pacelli* (2008) 165 Cal.App.4th 927, 935.)

In challenging the trial court’s attorney fees award, defendants repeat many of the same arguments we have rejected, and we need not address them again. We also disregard their irrelevant and inappropriate personal attacks on Tessie’s attorney. As far as we can discern, defendants advance three substantive arguments to challenge the trial court’s fee award: (1) the underlying contract contained an arbitration clause that “overrode” the attorney fees clause; (2) the fees incurred prior to the remittitur in the appeal of the attorney fees award in the underlying case were not incurred in enforcing the judgment; and (3) Tessie was not entitled to attorney fees for work done before the entry of judgment in the underlying case in March 2013.

Defendants’ argument based on the arbitration clause is an impermissible collateral attack on the final judgment in the underlying case, including the attorney fees award affirmed on appeal. (See *Estate of Wemyss* (1975) 49 Cal.App.3d 53, 58 [rejecting collateral attack on order of sale from which no appeal was taken].) Defendants also waived this contention by not raising it at any time in the underlying case while also fully litigating that case to final judgment. This is true even if they only “found out” about the arbitration clause in preparing their

opposition to Tessie's motion for attorney fees in this case, as they claim. (Cf. *Zamora v. Lehman* (2010) 186 Cal.App.4th 1, 17-18 [parties waived right to compel arbitration by not requesting it within reasonable time and by participating in discovery, even though they failed to remember arbitration clause existed].) Defendants forfeited their remaining arguments because they did not raise them at any time in the trial court. (See *Planned Protective Services v. Gorton* (1988) 200 Cal.App.3d 1, 12-13 [party may not raise new theory on appeal to challenge attorney fees award], disapproved on another ground in *Martin v. Szeto* (2004) 32 Cal.4th 445, 451, fn. 7.) Thus, defendants have presented no basis to reverse the court's attorney fees award.

6. Additional Arguments

To the extent defendants raise other contentions we have not discussed, we have considered them and find them lacking support and/or merit.

DISPOSITION

The judgment and attorney fees award are affirmed. Tessie is awarded costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.